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June 19, 2015

United States, et al. v. American Express, et al., No. 15-1672

Dear Ms. O'Hagan Wolfe:

I write on behalf of Defendants-Appellants American Express Company and American Express Travel Related Services Co., Inc. (collectively, "Amex") regarding the Court's June 16, 2015, order directing that consideration of Amex's appeal be expedited on a schedule to be determined by the Clerk of Court and that the parties shall confer and advise the Clerk of Court of a proposed expedited briefing schedule.

Pursuant to that order, Amex has conferred with counsel for Plaintiffs-Appellees (collectively, the "Government"), and proposed an expedited schedule under which Amex would get 30 days for its opening brief, the Government would get 30 days for its responsive brief and Amex would get 15 days for its reply brief. The Government declined to agree to this proposal, claiming that it needs more time for its responsive brief.

As a compromise, Amex proposes for your consideration an expedited schedule under which its opening brief is due 45 days from today (August 3), the Government's brief in response is due 45 days after Amex files its opening brief (September 17), and Amex's reply brief is due 14 days thereafter (October 1).

By contrast, the Government proposes a schedule under which Amex would file its opening brief on an expedited schedule (30 days), and the Government would have 75 days to file its responsive brief. (See Letter from United States, et al. (Dkt. 110).) According to the Government, granting it 75 days for its responsive brief is justified because the record is voluminous and Amex has had time to work on its opening brief since the district court issued its liability decision in February. That argument is unfounded. As the Government is well aware, Amex's appeal will raise issues with which the Government is thoroughly familiar and that it has addressed a number of times, at length, during the course of the trial and thereafter.

The Government also claims that its proposal is justified because it intends to file one brief on behalf of both the United States and the 17 Plaintiff States. Yet the Government has filed numerous briefs jointly on behalf of the United States and the Plaintiff States in this case, and not once has it suggested that it needed additional time to coordinate that process. For example, in the district court, the Government proposed that the parties concurrently file their respective post-trial briefs, proposed findings of fact and proposed conclusions of law within 30 days of the close of trial, notwithstanding the voluminous trial record and the fact that the United States planned to file on behalf of itself as well as all Plaintiff States. Amex consented to that schedule, the district court ordered it, and, at the end of 30 days, the Government—on behalf of all plaintiffs—filed a 54-page post-trial brief, over 700 proposed findings of fact and over 125 proposed conclusions of law.

This is a matter of great importance to Amex and the Court has directed that this appeal will be expedited. Amex's proposed briefing schedule is both consistent with the Court's order and fair to all parties. Accordingly, Amex respectfully requests that the Court enter Amex's proposed briefing schedule, pursuant to which Amex's opening brief will be

due August 3, 2015, the Government's responsive brief will be due September 17, 2015, and Amex's reply brief will be due October 1, 2015.

Respectfully,

/s/ Evan R. Chesler

Evan R. Chesler

Hon. Catherine O'Hagan Wolfe
Clerk of Court
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BY ECF

Copies to:

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